

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 122403-001

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 7th day of December 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On July 19, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on July 26, 2011.

The Commissioner notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on August 1, 2011.

The issue in this external review can be decided by a contractual analysis. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner's health care benefits are described in the BCBSM *Flexible Blue Individual Market Certificate* (the certificate) as amended by *Rider ICB-OV* (the rider). The rider added coverage for two office visits per member each calendar year.

The Petitioner began having allergy symptoms in November of 2010. His primary care physician (PCP) recommended allergy testing and he had the test and related office visits at XXXXX, a participating provider. The charge for the allergy test was \$908.00 and the charge for the office visits was \$390.00, a total of \$1,298.00.

BCBSM denied coverage for the office visits stating the Petitioner had exhausted the number allowed under the rider. BCBSM also denied coverage for the allergy test on the basis that it is not a benefit under the certificate. The Petitioner subsequently agreed that the office visits would not be covered because he had exceeded the number allowed in the plan year.

The Petitioner appealed BCBSM's denial of coverage for the allergy tests through its internal grievance process. BCBSM held a managerial-level conference on May 24, 2011, and issued a final adverse determination dated June 3, 2011.

III. ISSUE

Is BCBSM required to pay for the Petitioner's allergy testing?

IV. ANALYSIS

Petitioner's Argument

When his physician recommended allergy testing, the Petitioner used the BCBSM website to find a participating allergist. As the Petitioner explained in his request for an external review:

. . . I went to the BCBSM website and did a doctor search for an allergist that participates with our plan. In the information section I entered our specific plan and the type of doctor I was looking for and it gave me a list of several doctors to choose from. . . . Several weeks later I received a bill stating that our insurance company had rejected the claim stating that allergists are not something that is covered under our plan. Knowing there must be some kind of mistake I called and talked to a representative that said that our policy does not cover allergy related services. When I asked what plan does the response was that none of the BCBSM plans covered allergy related services.

* * *

It is my position that the information given by BCBSM is misleading at best. If allergy related services are not a covered benefit under any of their plans why would there be a link on their website showing 26 doctors that participate with our specific plan? In addition I also searched our plan benefits on their website and there is nothing that states Allergy services are not covered. . . .

The Petitioner believes he was misled, although not intentionally, and he wants BCBSM to cover the \$908.00 charge for the allergy test.

BCBSM's Argument

BCBSM cites this provision in Section 4 of the certificate, under "Physician and Other Professional Provider Services That Are Payable," as the basis for its denial of the allergy test:

The following services are described in this section. These pages explain the extent to which the service is covered.

- Presurgical Consultations
- Anesthetics
- Contraceptive Injections
- Contraceptive Devices
- Technical Surgical Assistance
- Inpatient Medical Care
- Inpatient Mental Health Care
- Inpatient Consultations
- Emergency Treatment
- Chemotherapy
- End Stage Renal Disease
- Therapeutic Radiology
- Diagnostic Radiology
- Diagnostic Services
- Diagnostic Laboratory and Pathology Services
- Cardiac Rehabilitation
- Voluntary Sterilization
- Screening Mammography
- Certified Nurse Practitioner Services
- Certified Nurse Midwife Services
- Optometrist Services
- Specialty Pharmaceuticals
- Injectable Drugs
- Special Foods for Metabolic Diseases

Because allergy testing is not on this list, BCBSM states it is not a covered benefit.

Commissioner's Review

BCBSM believes that it is not responsible for the Petitioner's allergy test and related services because allergy services are not specifically mentioned in the certificate. The Commissioner disagrees.

The Petitioner had symptoms that prompted his physician to recommend an allergy test, a diagnostic service. Diagnostic services are included in the list above and the diagnostic service benefit is explained on p. 4.11 of the certificate:

We pay for diagnostic services used by a physician to diagnose disease, illness, pregnancy or injury.

- Physician services are payable for tests such as:
 - Thyroid function
 - Electrocardiogram (EKG)
 - Electroencephalogram (EEG)
 - Pulmonary function studies
- Physician and independent physical therapist services are payable for the following tests:
 - Electromyogram (EMG)
 - Nerve conduction

Diagnostic laboratory and pathology services are described on p. 4.11 of the certificate:

We pay for laboratory and pathology exams needed to diagnose a disease, illness, pregnancy or injury. The services must be provided by your physician or by another physician or a laboratory if prescribed by your physician.

Under “Diagnostic Services,” the certificate indicates that physician services “are payable for tests such as” and then a list of tests follows. The Commissioner interprets the phrase “such as” to mean “for example,” i.e., the tests on the list are among those to be included for coverage but the list is not intended to be exhaustive. Furthermore, the four tests shown are not so similar in nature that one would conclude that they constituted a specific set of tests that would reasonably exclude allergy tests. If the certificate had intended to limit diagnostic services to the four tests listed, it would have explicitly stated that fact.

The Commissioner concludes and finds that the November 18, 2010, allergy test was a covered benefit under the terms of the certificate.

V. ORDER

Blue Cross Blue Shield of Michigan’s final adverse determination of June 3, 2011, is reversed. BCBSM shall cover the Petitioner’s November 18, 2010, allergy test according to the terms and conditions of the certificate within 60 days of the date of this Order and shall, within

seven (7) days of providing coverage, furnish the Commissioner with proof it has implemented this Order.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner